

EXHIBIT 27

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

DARIUS CLARK, JOHN H. COTTRELL,)	
DAVID LUMB, KYLA ROLLIER, and)	
JENNY SZETO, individually and on)	
behalf of all others similarly)	
situated,)	Case No.
)	3:20-cv-05991-SK
Plaintiffs,)	
)	
vs.)	
)	HIGHLY
YODLEE, INC.,)	CONFIDENTIAL -
)	ATTORNEYS' EYES
Defendant.)	ONLY
)	

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY
VIDEOTAPED DEPOSITION OF SERGE EGELMAN, Ph.D.
San Francisco, California
Friday, May 10, 2024

REPORTED BY:

Derek L. Hoagland, CSR No. 13445

Job No. 98187

SERGE EGELMAN, PH.D.

May 10, 2024

1 LLP in New York on behalf of Defendant Yodlee, Inc.

2 THE VIDEOGRAPHER: Thank you.

3 Will the court reporter please swear in the
4 doctor.

5 (Whereupon, the deponent is duly sworn by the
6 court reporter.)

7 MR. BOSSET: Good morning, Dr. Egelman.

8 THE DEPONENT: Good morning.

9 MR. BOSSET: Thank you for being here for your
10 deposition.

11

12 SERGE EGELMAN, Ph.D.,
13 having first been duly sworn,
14 was examined and testified as follows:

15

16 EXAMINATION

17 BY MR. BOSSET:

18 Q. Have you been deposed before?

19 A. I have.

20 Q. How many times?

21 A. I couldn't tell you off the top of my head.

22 Four, maybe. It's on my CV.

23 Q. Okay. Have you ever given trial testimony
24 before?

25 A. I have not.

SERGE EGELMAN, PH.D.

May 10, 2024

1 **A.** **Mm-hmm.**

2 **Q.** What's that case about?

3 **A.** Oh, it was a -- during the pandemic, a sports
4 club that had closed its doors but was continuing to
5 charge members, you know, their membership fee despite
6 not providing the service, and then refusing to offer
7 refunds.

8 **Q.** What was -- did you offer an expert opinion in
9 that case?

10 **A.** **I did.**

11 **Q.** On -- what was the subject matter?

12 **A.** The defense offered a survey that they claimed
13 showed that consumers were totally okay with this, and
14 as someone who has administered hundreds of surveys
15 throughout my career, I was asked to opine on the
16 quality of the survey that was used by the defense to --
17 to reach that conclusion.

18 **Q.** And, again, you were retained by the plaintiff
19 in that case, right?

20 **A.** **By the government, yes.**

21 **Q.** The government was the plaintiff in that case?

22 **A.** **Yeah.**

23 **Q.** You also identify having worked on the In re
24 Vizio Consumer Privacy Litigation. Is that correct?

25 **A.** **Yeah.**

SERGE EGELMAN, PH.D.

May 10, 2024

1 BY MR. BOSSET:

2 Q. It's possible?

3 **A. It's possible. I mean, I -- as an academic, I**
4 **tend to write at length. And so usually I try and be**
5 **verbose, and then remove stuff throughout the editing**
6 **process.**

7 Q. Okay. Were there any sections of your report
8 that were actually provided to you by Plaintiffs'
9 counsel?

10 **A. No.**

11 Q. How many drafts did you --

12 **A. Actually, that's not true.**

13 Q. Okay.

14 **A. They -- the Appendix 2 that you alluded to**
15 **earlier, based on my footnotes that I had added, they**
16 **compiled, you know, that full list of citations that**
17 **appeared as Appendix 2.**

18 Q. Okay. And Appendix 2 are the materials that you
19 reviewed in connection with your work in the case?

20 **A. Right, which are all cited throughout the**
21 **report. But then they took the extra step of compiling**
22 **them into one list of all the sources.**

23 Q. Mm-hmm. Who provided you with those materials?

24 MR. STEINBERG: Objection.

25 THE DEPONENT: What do you mean? I mean,

SERGE EGELMAN, PH.D.

May 10, 2024

1 throughout this process, you know, Plaintiffs' counsel
2 gave me documents that they had received from discovery.

3 BY MR. BOSSET:

4 Q. Okay. There are also some documents that are
5 titled "publicly available documents"?

6 **A. Sure.**

7 Q. Did you have all of those in your possession
8 before this matter began?

9 MR. STEINBERG: Objection.

10 THE DEPONENT: I'm not sure what you mean.

11 BY MR. BOSSET:

12 Q. What part of what I said is not --

13 **A. Define possession. I mean, so if it's a website**
14 **that I'm citing, how do I possess the website.**

15 Q. Did Plaintiffs' counsel provide to you any of
16 the documents that you list under publicly available
17 documents in Appendix 2?

18 **A. I would -- let me -- let's look through**
19 **Appendix 2.**

20 **So, like, the first one, the CFPB guidelines,**
21 **those were cited in several of the discovery materials,**
22 **and so that was given to me as part of most of the**
23 **discovery materials because I think that was an included**
24 **exhibit.**

25 Q. So you'd never seen that before?

SERGE EGELMAN, PH.D.

May 10, 2024

1 Q. Okay. And what do you mean by the phrase
2 "standards, best practices, and norms" as used in
3 paragraph 7?

4 **A. I'm not sure which of those words are confusing.**

5 Q. Well, what do they mean to you? Are they -- are
6 they interchangeable? Are they conveying the same
7 point?

8 **A. Well, that's the topic I hit on in this report,**
9 **which is that many of these industry standards and norms**
10 **and best practices are related and come from the same**
11 **place.**

12 Q. Okay. So they don't have different meanings to
13 you as you use them here. They're meant to be different
14 ways of saying the same point?

15 MR. STEINBERG: Objection.

16 BY MR. BOSSET:

17 Q. Is that fair?

18 **A. I'm not sure I would say that.**

19 Q. Well, then what's the different meaning?

20 MR. STEINBERG: Objection.

21 THE DEPONENT: I mean, industry standards, you
22 can understand how might -- that might be different than
23 a norm.

24 BY MR. BOSSET:

25 Q. How?

May 10, 2024

1 A. Different things. I mean, same thing with, you
2 know, best practices. So, you know, some -- some
3 standards might not adhere to best practices or some
4 norms might not -- some norms might not appear in
5 industry standards. I mean, these are all -- these are
6 different terms. They're related, certainly. And,
7 again, like if you read the report, I explain how -- you
8 know, the concepts that I'm referring to.

9 Q. Well, you don't define the word "norm," so I'm
10 asking you to define the word "norm," which you used in
11 your report.

12 A. Norm is the, you know, accepted -- accepted --
13 you know, commonly accepted practices.

14 Q. Okay. And what is a standard as you used it in
15 the report?

16 A. It's sort of a bit more formal than the commonly
17 accepted norm -- you know, norm. Industry standards are
18 usually, you know, codified in some way. So, you know,
19 industry groups will put together a list of -- of, you
20 know, standards that they believe that their industry
21 should adhere to.

22 Q. And what are best practices as you used it in
23 your report?

24 A. Recommendations for the best way of doing
25 something.

SERGE EGELMAN, PH.D.

May 10, 2024

1 PayPal user, I'm not sure that's accurate.

2 Q. What part is inaccurate, that they've ever
3 offered it or that they've offered it for the entire
4 period?

5 A. Oh, that's an easy alternative to IAV.

6 Q. Is it an alternative offered by PayPal to link
7 accounts to the PayPal?

8 A. I am not aware of the -- I'm not aware of during
9 the time period of when it was and wasn't offered, so
10 I'm not sure I can comment on that. But I am aware as a
11 PayPal -- having used PayPal, that it is very difficult
12 to figure out how to do the manual option instead of the
13 IAV, at least certain versions of it.

14 Q. When did you begin using PayPal?

15 A. I couldn't tell you off the top of my head.

16 Q. Did you link any of your accounts to your PayPal
17 account?

18 A. I mean, probably.

19 Q. How?

20 A. I -- probably -- I don't remember, honestly.

21 Q. You don't remember if you used IAV?

22 A. I do not. I recall -- I honestly don't know.

23 Q. Did you become a PayPal member during what you
24 call the relevant period?

25 A. No. It would have been before.

SERGE EGELMAN, PH.D.

May 10, 2024

1 Q. You didn't interview any of the plaintiffs?

2 **A. No.**

3 Q. Did you read any of the deposition testimony
4 from the plaintiffs in the case?

5 **A. I don't believe so. I read the depositions that**
6 **are listed in the report.**

7 Q. Okay. Did you speak with any other PayPal users
8 in connection with your work in the case?

9 **A. I mean, I -- I don't know which of Plaintiffs'**
10 **counsel are PayPal users. Beyond that, no.**

11 Q. Okay. Did you perform any surveys as part of
12 your work in the case?

13 **A. No.**

14 Q. Why not?

15 **A. Because I wasn't asked to.**

16 Q. Did you see any survey results relating to
17 PayPal users --

18 **A. No.**

19 Q. -- in connection with this case?

20 **A. Not in connection with this case, no.**

21 Q. Okay. In connection with any other work that
22 you've done, did you see any surveys relating to PayPal
23 users?

24 **A. Maybe. I mean, none that come to mind that are**
25 **relevant to this case.**

SERGE EGELMAN, PH.D.

May 10, 2024

1 Q. Okay. Okay. Did you review the data handling
2 practices of any of Yodlee's competitors?

3 **A. No.**

4 Q. Do you have any knowledge concerning the data
5 handling practices of any of Yodlee's competitors?

6 **A. I mean, yeah, I think that, you know, the**
7 **companies that are storing users banking passwords**
8 **without adequate informed consent and using them for**
9 **secondary purposes shouldn't be occurring, and certainly**
10 **Yodlee has competitors that are doing that same thing.**

11 Q. Okay. Did you review the (data handling
12 practices of any other company that offers instant
13 account verification service?

14 **A. No.**

15 Q. So tell me what your understanding is of
16 Yodlee's business.

17 **MR. STEINBERG: Objection.**

18 **THE DEPONENT: I mean, it's in the report. So**
19 **they have multiple businesses, so one is offering this**
20 **verification product where instead of doing the**
21 **challenge deposit method, you just give your banking**
22 **credentials to Yodlee, and then Yodlee accesses your**
23 **account and then reports back to PayPal that, yes, in**
24 **fact the account can be accessed, here is the routing**
25 **number and account number. And that can happen quickly**

SERGE EGELMAN, PH.D.

May 10, 2024

1 But we'll agree to disagree.

2 **A. I mean, as a non-lawyer --**

3 Q. Yodlee's don't pay -- Yodlee -- PayPal users
4 don't pay Yodlee any money to receive the IAV service.

5 **A. Okay. I mean, my understanding is --**

6 Q. Do you agree?

7 **A. Any money?**

8 Q. Yes.

9 **A. No, they do not pay money.**

10 Q. Okay.

11 **A. But, I mean, under -- CCPA defines -- would**
12 **still define that as a sale because they're paying with**
13 **their data.**

14 Q. So are you a lawyer, Dr. Egelman?

15 **A. I am not.**

16 Q. So how can you render an opinion on what the
17 CCPA defines as a sale, which is a California statute?

18 MR. STEINBERG: Objection.

19 THE DEPONENT: As someone who researches online
20 privacy for a living, I am aware of what is in CCPA.

21 I'm not drawing a legal conclusion. I am just saying
22 that a sale, generally speaking, isn't limited to
23 necessarily a monetary transaction.

24 BY MR. BOSSET:

25 Q. It certainly sounded like a legal conclusion to

May 10, 2024

1 of interest to PayPal is getting back an account number
2 so that they know how to link that user's bank accounts.

3 Q. Is it your -- do you know whether as part of the
4 basic IAV service Yodlee also provided PayPal with the
5 account balance?

6 A. That was provided at one point. I don't know if
7 that's -- that was in the basic service or if the IAV+
8 service added that. But yes, that was certainly within
9 the time period, that was a thing.

10 Q. Okay. And then you write in paragraph 25 that
11 in 2016 PayPal added an IAV service called IAV+?

12 A. Yep.

13 Q. Is that right?

14 And what is your understanding of IAV+?

15 A. Where -- that's where they got permission to
16 pull the transaction data for the last, I guess, 90 --
17 90 days, up to a year or so, when the user did the
18 account verification. So in addition to doing an
19 account verification, PayPal got a snapshot of the
20 user's previous transactions.

21 Q. Okay. And do you agree that it was PayPal that
22 would determine for which of its users it wanted Yodlee
23 to retrieve account transaction history?

24 A. That's complicated the evidence suggests Yodlee
25 did it for just as many people as possible.

May 10, 2024

1 have set up for receiving data and how it goes to the
2 data warehouse and there -- and the fact that there are
3 no controls that prevent the data from going into the
4 warehouse. So the -- the evidence seems to suggest that
5 they are doing this systematically for all PayPal users.

6 Q. Okay. That's your interpretation of what -- of
7 the evidence?

8 MR. STEINBERG: Objection. Objection.

9 THE DEPONENT: As -- as -- yes, as a literate
10 person, that's, yes, my interpretation.

11 BY MR. BOSSET:

12 Q. All right. You read deposition testimony that
13 refutes what you just said, didn't you, that --

14 A. Not that I recall.

15 Q. Okay.

16 A. I recall reading deposition testimony that
17 supports what I just said.

18 Q. What testimony was that?

19 A. I mean, we can go back through those
20 depositions, but it was some of the later ones. Again,
21 without having the depositions in front of me, I don't
22 want to guess.

23 Q. Mm-hmm. Okay. Do you agree that PayPal has a
24 legitimate business interest in reviewing a user's
25 account transaction history in connection with the

SERGE EGELMAN, PH.D.

May 10, 2024

1 verification process?

2 MR. STEINBERG: Objection.

3 THE DEPONENT: If it's done with that consumer's
4 consent, sure.

5 BY MR. BOSSET:

6 Q. And what is that interest that PayPal would have
7 with consumer's consent?

8 **A. Cutting down on fraud.**

9 Q. Mm-hmm.

10 **A. That might be one.**

11 Q. What do you mean by that?

12 **A. Someone who is connecting a bank account to**
13 **PayPal that they don't actually own.**

14 Q. Mm-hmm. Okay. Continuing with paragraph 25,
15 you note that in 2019 PayPal added another IAV option
16 called account Balance Refresh.

17 Do you see that?

18 **A. Yep.**

19 Q. Okay. And among the materials you reviewed was
20 a statement of work, specifically No. 8, that related to
21 the addition of the account Balance Refresh feature,
22 correct? Do you remember that?

23 **A. Do I remember the specific document?**

24 Q. Mm-hmm.

25 **A. No. Again, I was shown many documents. I've**

SERGE EGELMAN, PH.D.

May 10, 2024

1 **A.** **I think that's a legal question that I'm not**
2 **here to answer.**

3 Q. So you don't know?

4 MR. STEINBERG: Objection. Asked and answered.

5 THE DEPONENT: I'm not a lawyer.

6 BY MR. BOSSET:

7 Q. Okay. So you don't know?

8 MR. STEINBERG: Objection. Asked and answered.

9 THE DEPONENT: For the purpose of -- of this
10 matter, I -- I am not a legal expert, and my opinion on
11 that just doesn't matter.

12 BY MR. BOSSET:

13 Q. Okay. Let's take look at paragraph 73 of your
14 report, which begins with section Roman III called "Best
15 Practices For Handling Consumer Data."

16 Do you see that?

17 **A.** **Yep.**

18 Q. And in 73, you refer to what you call Fair
19 Information Practice Principles, or FIPPs is the
20 acronym, F-I-P-P-s.

21 Do you see that?

22 **A.** **Yeah. It's not just me referring to that.**

23 **That's a well-accepted term.**

24 Q. Okay. And you assert that they provide the
25 foundation for what you call best practices for handling

SERGE EGELMAN, PH.D.

May 10, 2024

1 very first page.

2 Do you see that transmittal --

3 A. Mm-hmm.

4 Q. -- letter to the secretary?

5 And in the very first paragraph of that first
6 page of this report reads:

7 "Our recommendations provide the framework for
8 general solutions, and also specify actions to be taken
9 both within HEW and by the Federal Government as a
10 whole."

11 Did I read that correctly?

12 A. You did.

13 Q. So by its own terms, the report is making
14 recommendations only.

15 Do you agree with that?

16 A. Yep.

17 Q. Okay. And by its own terms, the report is only
18 specifying actions to be taken by the Federal
19 Government, correct?

**20 A. Yeah. But if you read the history in my report,
21 this was a very influential report, which then paved the
22 way for FTC rulemaking around this and -- and even
23 industry. So I mean, as I document, these principles
24 have been adopted across sectors.**

25 Q. And the HEW report that we've marked as an

SERGE EGELMAN, PH.D.

May 10, 2024

1 exhibit here has no legal effect. Is that correct?

2 MR. STEINBERG: Objection. Legal conclusion.

3 BY MR. BOSSET:

4 Q. There's no force of --

5 **A. I would say indirectly, it had a very strong**
6 **legal effect.**

7 Q. Really? Okay.

8 Is this document binding on Yodlee?

9 **A. No.**

10 Q. All right. In fact, if you can look on page 11.

11 MR. STEINBERG: Are the pages numbered?

12 MR. BOSSET: They are not numbered. So you will
13 just have to manually get to page 11.

14 THE DEPONENT: Oh, of this. Okay.

15 Okay.

16 BY MR. BOSSET:

17 Q. So this was a -- again, this was a report to
18 Congress. Do you agree with that?

19 **A. Mm-hmm.**

20 Q. All right. And at the top of page 11, this
21 advisory committee recommend -- says:

22 "We recommend the enactment of legislation
23 establishing a code of fair information practice for all
24 automated personal data systems."

25 Do you see that?

SERGE EGELMAN, PH.D.

May 10, 2024

1 **A. Yep.**

2 Q. Are you aware of any federal legislation that
3 was ever enacted establishing a code of fair information
4 practice?

5 MR. STEINBERG: Objection.

6 THE DEPONENT: There are certainly sectoral ones
7 federally that stem from this.

8 BY MR. BOSSET:

9 Q. What are those?

10 **A. Gramm-Leach-Bliley. HIPAA. COPPA covers**
11 **children. Many of those principles and all those**
12 **privacy laws, those are federal privacy laws that cover**
13 **different sectors. The principles stem from this.**

14 Q. None of those laws cover Yodlee, right?

15 **A. I --**

16 MR. STEINBERG: Objection. Legal conclusion.

17 THE DEPONENT: I honestly don't know, as a
18 nonlawyer.

19 MR. BOSSET: Okay.

20 THE DEPONENT: But I also never written -- wrote
21 in the report that this document is binding upon Yodlee
22 either, so.

23 BY MR. BOSSET:

24 Q. Okay. You can put that aside. I told you I
25 didn't have a lot to ask you about it.

SERGE EGELMAN, PH.D.

May 10, 2024

1 paragraph, beginning with the word "moreover"?

2 **A. "Moreover, the trade association guidelines**
3 **submitted to the commission do not reflect industry**
4 **acceptance of the Fair Information Practice Principles."**

5 Q. Is the 1998 FTC report to Congress binding on
6 Yodlee?

7 MR. STEINBERG: Objection. Legal conclusion.

8 THE DEPONENT: I -- I don't really know the
9 answer to that. The FTC, you know, releases policy
10 documents, which frame their thinking and how they bring
11 enforcement actions. Those don't necessarily have the
12 force of law in my understanding. However, it does
13 usually foreshadow future rulemaking and the types of
14 cases that they do plan to bring. So indirectly, these
15 types of policy statements do have effects on -- on
16 enforcement.

17 BY MR. BOSSET:

18 Q. Okay. But the report is not binding on Yodlee,
19 right?

20 MR. STEINBERG: Objection. Asked and answered.
21 Legal conclusion.

22 MR. BOSSET: No, he didn't answer it. That's
23 why I'm asking.

24 THE DEPONENT: I did already answer that.

25 ///

SERGE EGELMAN, PH.D.

May 10, 2024

1 BY MR. BOSSET:

2 Q. The answer is no, right?

3 **A. This isn't -- this isn't a statute.**

4 Q. Okay.

5 MR. STEINBERG: Objection.

6 BY MR. BOSSET:

7 Q. So the answer is no?

8 MR. STEINBERG: Objection. Asked and answered.

9 Asks for a legal conclusion.

10 THE DEPONENT: This is not a -- this is -- this
11 isn't a law, correct.

12 MR. BOSSET: Okay. Thank you.

13 BY MR. BOSSET:

14 Q. And then I think the next resource that you cite
15 for FIPPs is a memorandum in 2008 from the Department of
16 Homeland Security. Is that correct?

17 **A. Sounds right.**

18 MR. BOSSET: Let's mark that next exhibit.

19 (Exhibit No. 181 marked for identification.)

20 BY MR. BOSSET:

21 Q. That's Exhibit 181. So do you know what the
22 Department of Homeland Security is?

23 **A. Yes.**

24 Q. What is it?

25 **A. It was created in the wake of 9/11 to -- it's**

SERGE EGELMAN, PH.D.

May 10, 2024

1 hard to give one concrete thing that they do. It's kind
2 of an amalgamation of several different things. So they
3 do everything from, like, the TSA is under DHS. They
4 also do basic research funding. So I've gotten funding
5 from them in the past through the Science and Technology
6 Directorate. They also do -- basically, they do some
7 domestic security stuff that is sort of parallel to --
8 there's a lot of different things that they do.

9 Q. The Department of Homeland Security does not
10 regulate businesses handling consumer data, does it?

11 MR. STEINBERG: Objection.

12 THE DEPONENT: I'm actually not sure of the
13 answer to that.

14 BY MR. BOSSET:

15 Q. Okay. Take a look at the very first sentence
16 from page 1, under "Purpose."

17 **A. Okay.**

18 Q. It reads:

19 "This memorandum memorializes the Fair
20 Information Practice Principles, FIPPs, as the
21 foundational privacies for -- principles for privacy
22 policy and implementation at the Department of Homeland
23 Security, DHS."

24 **A. Yep.**

25 Q. Have I read that correctly?

SERGE EGELMAN, PH.D.

May 10, 2024

1 A. Yep.

2 Q. So this memorandum was written to apply to DHS
3 alone, correct?

4 A. That's correct.

5 Q. And the DHS report has no effect on Yodlee,
6 correct?

7 MR. STEINBERG: Objection.

8 THE DEPONENT: Not --

9 BY MR. BOSSET:

10 Q. No legal effect on Yodlee?

11 A. Not that I'm aware, no.

12 Q. Okay. And then I think in your report, the next
13 source you cite for the FIPPs comes from the OECD?

14 A. Mm-hmm.

15 Q. Is that correct?

16 And what is the OECD?

17 A. The Organisation For Economic Co-Operation and
18 Development is a multi -- I'm not even sure how to
19 describe it. It's a -- you know, non-governments
20 participate to make recommendations for economic policy
21 and trade and stuff like that.

22 Q. And indeed the resource you cite is actually
23 called a recommendation, correct?

24 A. Yep.

25 Q. In footnote 170 of your report?

May 10, 2024

1 **A.** Uh-huh. The point of making all these
2 recommendations was to just demonstrate how widespread
3 and -- you know, the impact that the -- the FIPPs have
4 and how they're pervasive across sectors and industry,
5 and substantially similar when you get down to the
6 specific principles.

7 Q. And the OECD has no role in regulating
8 businesses within the United States, correct?

9 MR. STEINBERG: Objection.

10 THE DEPONENT: I'm not aware.

11 MR. BOSSET: Okay.

12 THE DEPONENT: I don't know. I -- I don't know.
13 I don't think so, but I'm not -- again, not an expert on
14 that.

15 BY MR. BOSSET:

16 Q. And the OECD's recommendations are not legally
17 binding, correct?

18 MR. STEINBERG: Objection.

19 THE DEPONENT: Correct. I don't say that they
20 are.

21 BY MR. BOSSET:

22 Q. Okay. And the OECD's recommendations are not
23 binding on Yodlee, correct?

24 **A.** I'm not aware of that, no.

25 Q. Okay. The next document you refer to is a

SERGE EGELMAN, PH.D.

May 10, 2024

1 Q. Thank you.

2 And the CFPB release that you just read from has
3 no legal effect, right?

4 **A. I'm not sure.**

5 MR. STEINBERG: Objection.

6 THE DEPONENT: I -- I don't agree with that.

7 BY MR. BOSSET:

8 Q. Well, it doesn't establish any binding
9 requirements or obligations. Do you agree with that,
10 since you just read it?

11 **A. By itself, no. But if an organization says that**
12 **it follows these guidelines and publicly say that, then**
13 **I would expect they follow the guidelines and there are**
14 **to be legal ramifications if, in fact, they don't.**

15 Q. Are you aware of any investigation by the CFPB
16 of Yodlee?

17 **A. I have no involvement with CFPB. I don't know**
18 **why I would know the status of any of their**
19 **investigations.**

20 Q. So you're not aware of any, is the answer to my
21 question, right?

22 **A. No, I'm not.**

23 Q. Okay. You also refer to industry group
24 resources as supporting your opinions concerning best
25 practices of -- using FIPPs. One of them is the 2020

SERGE EGELMAN, PH.D.

May 10, 2024

1 Network Advertising Initiative Code of Conduct, correct?

2 **A. Mm-hmm.**

3 Q. And that has nothing to do with Yodlee. Do you
4 agree with that?

5 MR. STEINBERG: Objection.

6 THE DEPONENT: Oh. Well, I mean, it does in
7 that, again, all of these documents I cited to explain
8 how pervasive the FIPPs are across sectors and
9 industries and how well known, almost as if they are
10 best practices or norms. And that's why, despite the
11 fact that these aren't legally binding, the
12 recommendations in all these documents are substantially
13 similar. And not only that, but they're industry groups
14 that also make recommendations that are substantially
15 similar to all of these documents, and Yodlee has
16 publicly claimed that it follows these guidelines.

17 BY MR. BOSSET:

18 Q. Has Yodlee claimed that it follows the Network
19 Advertising Initiative Code of Conduct? Is that what
20 your testimony is?

21 **A. No. The point of that one in particular was to**
22 **demonstrate it's not just the ones that Yodlee claims to**
23 **follow, but other industry stand -- you know, other**
24 **industry initiatives also fall -- you know, claim to**
25 **follow the FIPPs.**

SERGE EGELMAN, PH.D.

May 10, 2024

1 Q. I mean, the network gathering initiative focuses
2 on advertising technology providers --

3 **A. Mm-hmm.**

4 Q. In the online ecosystem, correct?

5 And Yodlee is not an advertising technology
6 provider.

7 Do you agree with me on that?

8 **A. I'm not aware that Yodlee is in the advertising**
9 **business.**

10 Q. Okay. Do you have any reason to believe Yodlee
11 is an NAI member?

12 **A. I have no idea who is and who is not an NAI**
13 **member. But, again, I already said that the citation**
14 **wasn't because I was claiming Yodlee is an NIA member,**
15 **but to demonstrate that these principles are pervasive.**

16 Q. The NAI Code of Conduct has no binding effect on
17 Yodlee, correct?

18 **A. Correct.**

19 MR. STEINBERG: Objection.

20 BY MR. BOSSET:

21 Q. And likewise, the Center For Financial Services
22 Innovation paper that you cite from 2016, that has no
23 legal effect either, does it?

24 MR. STEINBERG: Objection.

25 THE DEPONENT: Doesn't Yodlee claim to be

SERGE EGELMAN, PH.D.

May 10, 2024

1 involved with that and abide by those principles?

2 BY MR. BOSSET:

3 Q. That's not my question.

4 **A. Well, I think --**

5 Q. You want the question read back?

6 **A. -- if Yodlee -- if Yodlee is making**
7 **representations that it follows a set of principles**
8 **when, in fact, it does not, it seems like that's a --**
9 **that would be a legal issue.**

10 Q. Do you think that those are legally binding on
11 Yodlee? Is that your testimony?

12 **A. No. My -- my --**

13 MR. STEINBERG: Objection. Misstates his
14 testimony.

15 THE DEPONENT: My testimony is that if Yodlee
16 makes representations that it follows certain guidelines
17 and that's demonstrably false, then I presume there
18 would be some legal implications there.

19 MR. BOSSET: That wasn't my question. I will
20 move to strike that testimony as nonresponsive to my
21 question.

22 BY MR. BOSSET:

23 Q. My question was very clear, sir. Is it your
24 testimony that the 2016 CFSI paper is binding on Yodlee?

25 MR. STEINBERG: Objection.

SERGE EGELMAN, PH.D.

May 10, 2024

1 BY MR. BOSSET:

2 Q. Yes or no?

3 MR. STEINBERG: Asked and answered. Calls for a
4 legal conclusion.

5 THE DEPONENT: To the ex --

6 MR. STEINBERG: If you have anything new to
7 respond, you can.

8 THE DEPONENT: To the extent that Yodlee has
9 made public representations that they follow those
10 principles.

11 BY MR. BOSSET:

12 Q. You think that's legally binding? What's your
13 basis for that assumption?

14 MR. STEINBERG: Objection.

15 THE DEPONENT: Just being familiar with many
16 cases that I've consulted on for regulators that involve
17 similar deceptive statements.

18 BY MR. BOSSET:

19 Q. So you are able to provide legal conclusions
20 after all?

21 A. No. I'm not a lawyer.

22 Q. Is that your testimony?

23 A. I'm just saying --

24 MR. STEINBERG: Objection.

25 THE DEPONENT: -- in my experience, I have seen

SERGE EGELMAN, PH.D.

May 10, 2024

1 A. That was -- I did answer the question.

2 Q. Well, let's try it again.

3 IAPP publications have no legal effect, correct?

4 MR. STEINBERG: Objection. Calls for a legal
5 conclusion.

6 BY MR. BOSSET:

7 Q. It's a yes-or-no question.

8 MR. STEINBERG: Calls for a legal conclusion.
9 Objection.

10 THE DEPONENT: I'm saying that if Yodlee paid
11 attention to -- to that, then there might be a legal
12 effect. They might be in a better place legally.

13 BY MR. BOSSET:

14 Q. But that's not my question, sir. Can you answer
15 my question or --

16 A. You asked whether there's a legal effect.

17 Q. Right.

**18 A. And I'm saying that yes, there is a legal
19 effect, in that organizations that pay attention to
20 those recommendations generally have fewer legal
21 problems concerning privacy.**

22 Q. Are IAPP publications binding on anyone?

23 MR. STEINBERG: Objection. Legal conclusion.

24 THE DEPONENT: On anyone? I mean, certainly I
25 think the members who are certified by them.

SERGE EGELMAN, PH.D.

May 10, 2024

1 BY MR. BOSSET:

2 Q. Okay. How about, are they binding on Yodlee?

3 MR. STEINBERG: Objection. Legal conclusion.

4 THE DEPONENT: No.

5 BY MR. BOSSET:

6 Q. Okay. Are you aware of any court that's ruled
7 that the FIPPs have the force of law in the
8 United States?

9 **A. I'm not a lawyer. I don't -- I'm not familiar**
10 **with case law.**

11 Q. So you're not aware of any court that has held
12 the FIPPs have a force of law as you sit here today?

13 MR. STEINBERG: Objection. Foundation. Asked
14 and answered.

15 THE DEPONENT: Which instantiation of the FIPPs?

16 BY MR. BOSSET:

17 Q. Any instantiation of the FIPPs.

18 **A. Well, I mean, they're -- as I said, they're**
19 **elements of the FIPPs. In most of the data protection**
20 **laws that we have in this country, both state and**
21 **federally, and certainly courts have found violations of**
22 **those laws; ergo, there have been violations of the**
23 **FIPPs.**

24 Q. Okay.

25 **A. I mean, there are disclosure requirements. You**

SERGE EGELMAN, PH.D.

May 10, 2024

1 know, there -- there are sites that don't post privacy
2 policies. That goes to transparency. I'm certainly
3 aware of cases where companies have gotten in trouble
4 for not meeting that transparency principle.

5 Q. Are you giving the opinion that PayPal users are
6 aware of the FIPPs?

7 MR. STEINBERG: Objection.

8 THE DEPONENT: I didn't -- I don't know why you
9 would think I said that.

10 BY MR. BOSSET:

11 Q. So you -- that's not part of your opinion today,
12 that PayPal users would have been aware of the FIPPs?

13 MR. STEINBERG: Objection.

14 BY MR. BOSSET:

15 Q. Or the norms, standards, and practices set forth
16 therein?

17 A. I think most consumers are aware of norms,
18 certainly. Norms play a huge role in how people
19 interact with each other and with organizations.

20 Q. Are PayPal users aware of the FIPPs, then?

21 MR. STEINBERG: Objection.

22 THE DEPONENT: I don't know what PayPal users
23 are or are not aware of.

24 BY MR. BOSSET:

25 Q. Okay. You didn't survey PayPal users, as?

SERGE EGELMAN, PH.D.

May 10, 2024

1 **A.** **-- I did not.**

2 **Q.** -- said earlier?

3 Okay. Do you know if any other company
4 providing online instant account verification service
5 has implemented the FIPPs as you describe them in the
6 report?

7 MR. STEINBERG: Objection. Foundation.

8 THE DEPONENT: I haven't looked at other
9 companies.

10 BY MR. BOSSET:

11 **Q.** Okay.

12 MR. BOSSET: Let's go off the record for a
13 second.

14 So it's 12:32 --

15 THE VIDEOGRAPHER: This marks -- this marks the
16 end of media file labeled No. 3. Off the record at
17 12:32 p.m.

18 (A recess transpires.)

19 THE VIDEOGRAPHER: This marks the beginning of
20 media file labeled No. 4. Back on the record at
21 1:33 p.m.

22 MR. BOSSET: What exhibit number are we on?

23 THE REPORTER: 183.

24 MR. BOSSET: Okay. Let's mark that.

25 (Exhibit No. 183 marked for identification.)

SERGE EGELMAN, PH.D.

May 10, 2024

1 BY MR. BOSSET:

2 Q. Dr. Egelman, I've just handed you what's been
3 marked Exhibit 183. I'd like you to read that. It's
4 about a page and a half. And I'll be back. Let me get
5 my phone while you're reading it.

6 Are you finished?

7 **A. Yep.**

8 Q. So I will represent to you, Dr. Egelman, that
9 the email marked as Exhibit 183 is not listed on your
10 appendix; and, therefore, I infer it's not a document
11 you have seen before, even though it was produced in the
12 case.

13 **A. I -- I don't know why you would infer that.**

14 Q. So you -- do you recognize this document as
15 having seen it before, since it wasn't on your
16 Appendix 2?

17 **A. I mean, I -- I already told you repeatedly that**
18 **not every document I read appears in Appendix 2.**

19 Q. Okay. Do you think you read Exhibit 183,
20 Dr. Egelman?

21 **A. It -- it looks familiar.**

22 Q. Okay. Exhibit 183 is an email from
23 Julie Solomon to a number of people that include both
24 Yodlee and PayPal individuals.

25 Do you agree with that?

SERGE EGELMAN, PH.D.

May 10, 2024

1 A. That's what it appears, yeah.

2 Q. And it's dated November 19, 2015, and the
3 subject line is PayPal IAV+ Project Meeting Notes For
4 November 19, 2015.

5 Do you see that?

6 A. Yep.

7 Q. And at the very beginning, Julie thanks all for
8 their time this morning.

9 Do you see that?

10 A. Yep.

11 Q. Okay. And there's an identification of the
12 meeting participants, and on the left side are PayPal
13 participants and on the left side are Yodlee
14 participants.

15 Do you see that?

16 A. Mm-hmm.

17 Q. Okay. And if you would look under -- at the
18 bottom of the first page, where it says "Meeting Notes."

19 A. Mm-hmm.

20 Q. All right. The -- the little bullet points, the
21 second from the bottom reads as follows:

22 Quote, "PayPal had a question re storage for
23 90 days transactions," parens, "does Yodlee store,"
24 question mark, close parens.

25 Underneath that, bullet, "Yodlee does store

1 those transactions."

2 Did I read that correctly?

3 A. That's what the text says, of this document.

4 Q. Okay. So at least by November 19, 2015, PayPal
5 was aware that Yodlee stores transaction data for the
6 IAV+ service, correct?

7 MR. STEINBERG: Objection.

8 THE DEPONENT: I don't know the full context of
9 this email. I honestly don't know the answer to that.
10 I don't know whether -- yeah, I don't know which
11 transactions this is specifically talking about, and I
12 just don't know the context of this, why -- what
13 PayPal's exact question was.

14 BY MR. BOSSET:

15 Q. Well, as recited here, PayPal was made aware
16 that Yodlee does store transactions, 90 days of
17 transactions, correct?

18 MR. STEINBERG: Objection. Document speaks for
19 itself.

20 BY MR. BOSSET:

21 Q. And this is relating to IAV+, correct?

22 MR. STEINBERG: Objection. Form.

23 THE DEPONENT: That's what the text -- the text
24 of the document says that. Whether PayPal was aware of
25 the full extent of Yodlee's data collection and data

SERGE EGELMAN, PH.D.

May 10, 2024

1 handling practices, this doesn't really address that.

2 BY MR. BOSSET:

3 Q. Well, it's pretty clear that PayPal was made
4 aware on November 19th, 2015, of what the document says.
5 Would you at least agree with that, Dr. Egelman?

6 MR. STEINBERG: Object. Objection. Asked and
7 answered.

8 BY MR. BOSSET:

9 Q. Yes or no?

10 **A. PayPal -- PayPal employees were -- received an**
11 **email with this text.**

12 Q. Okay. Thank you, sir.

13 And PayPal implemented IAV+ for its users after
14 this meeting. Isn't that correct?

15 **A. That is my understanding.**

16 Q. Okay. And according to your report, PayPal had
17 a relationship with Yodlee that begins at least as far
18 back as 216. Do you agree with that?

19 **A. Yes.**

20 Q. All right. And outside of the selected emails
21 cited in your report, you have no knowledge of any
22 communications between PayPal and Yodlee concerning data
23 storage over the past 18 years, do you?

24 MR. STEINBERG: Objection. Form. Foundation.

25 THE DEPONENT: I'm aware of the depositions of

SERGE EGELMAN, PH.D.

May 10, 2024

1 MR. STEINBERG: Go ahead.

2 THE DEPONENT: I honestly don't remember.

3 BY MR. BOSSET:

4 Q. Okay. When we took a break, we were talking --
5 began to talk about transaction data enrichment. That's
6 the subject of this declaration, right?

7 A. Mm-hmm.

8 Q. Okay. And Mr. Deshmukh, who is head of data
9 science and innovation at Yodlee, states in paragraph 3,
10 which I will read completely into the record, quote:

11 "I understand that plaintiffs in this case have
12 alleged that Yodlee trains TDE models using all
13 transaction data in its systems. This is incorrect.
14 Yodlee's process is to train TDE models on [REDACTED]

[REDACTED]
17 Specifically, Yodlee uses [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Thus, only [REDACTED]

[REDACTED] No other transaction
25 data is used to train TDE models. This has been the

SERGE EGELMAN, PH.D.

May 10, 2024

1 case since the initial development of Yodlee's TDE
2 models in 2017."

3 Did I read paragraph 3 correctly?

4 **A. That's what it says.**

5 Q. And do you have any reason to believe that this
6 testimony is false?

7 MR. STEINBERG: Objection. Foundation. This
8 was -- this was signed two days ago, Eric. How -- he
9 has never seen this before.

10 MR. BOSSET: Okay.

11 MR. STEINBERG: How can you ask him that
12 question.

13 THE DEPONENT: I mean, I have questions about it
14 talks about [REDACTED] I have
15 questions about what that methodology is. He talks
16 about [REDACTED]

[REDACTED] Yeah, I have lots of questions.

20 BY MR. BOSSET:

21 Q. But if -- if you assume for purposes of this
22 question the -- the validity and accuracy of
23 Mr. Dehsmukh's testimony that [REDACTED]

SERGE EGELMAN, PH.D.

May 10, 2024

[REDACTED]

4 MR. STEINBERG: Objection. Hypothetical.

5 THE DEPONENT: I mean, we can assume all sorts
6 of different things to arrive at many different
7 conclusions. I mean, without knowing more details, it's
8 hard to interpret this document.

9 BY MR. BOSSET:

10 Q. So you can't answer my question as an expert who
11 deals in --

12 A. As an --

13 Q. -- assumptions and hypotheticals as a matter of
14 living?

15 MR. STEINBERG: Objection. Argumentative.
16 Calls for speculation. Form.

17 THE DEPONENT: As an expert, again, I repeat, I
18 would want to know more about [REDACTED]

[REDACTED]

21 BY MR. BOSSET:

22 Q. Is the declaration of Mr. Deshmukh marked as 186
23 relevant to your opinions in this case?

24 MR. STEINBERG: Objection. Foundation.

25 THE DEPONENT: There's nothing in here that I

SERGE EGELMAN, PH.D.

May 10, 2024

1 felt the need to cite in my report, forgetting the fact
2 that -- was this really signed two days ago? Yeah.
3 Okay. I mean, it -- did you expect the report to
4 contain a declaration that was signed two days ago.

5 BY MR. BOSSET:

6 Q. No, that's not my question. Do you want me to
7 read that back to you?

8 **A. Yeah. Yeah. Please read your question back to**
9 **you -- to me.**

10 Q. Is the declaration of Mr. Deshmukh marked as
11 Exhibit 186 relevant to your opinions in the case?

12 MR. STEINBERG: Objection. Foundation.

13 THE DEPONENT: I honestly don't know without
14 knowing more about his statement here.

15 BY MR. BOSSET:

16 Q. So for that reason, you don't credit it at all.
17 Am I hearing you correctly?

18 **A. I would want to know more about the things that**
19 **I already mentioned before offering an opinion on his**
20 **statement.**

21 Q. Okay. So does that mean, without knowing more,
22 you don't consider this declaration relevant to your
23 opinions concerning whether PayPal IAV transaction data
24 is used to train TDE models?

25 MR. STEINBERG: Objection.

SERGE EGELMAN, PH.D.

May 10, 2024

1 THE DEPONENT: It may be relevant about the TDE
2 model training aspect of this, but in terms of whether
3 or not this changes any of my opinions in my report,
4 it's hard to say without knowing more about this
5 declaration and the details of these statements.

6 BY MR. BOSSET:

7 Q. If you can turn to paragraph 44 of your report,
8 please. And I'm interested in the sentence actually on
9 the top of page 22. You write:

10 "To keep its data storage a secret and continue
11 accumulating more data, Yodlee employees misled PayPal
12 about its data retention practices while failing to take
13 action to delete PayPal user data or otherwise curb its
14 collection of PayPal user data."

15 And my question to you is: Are -- are you
16 giving an opinion in this case concerning the intent of
17 Yodlee's employees --

18 MR. STEINBERG: Objection.

19 BY MR. BOSSET:

20 Q. -- with respect to data storage?

21 MR. STEINBERG: Objection.

22 THE DEPONENT: The emails that were shared with
23 me made it very clear that Yodlee wanted to keep this
24 from PayPal.

25 ///

May 10, 2024

1 the rest of the story?

2 A. Well, they convinced PayPal to switch over the
3 product they were using so it would sort of back-justify
4 Yodlee's collection of this data that they weren't
5 supposed to be collecting under the previous product
6 offering. So there was that. I mean, there's also --

7 Q. So -- so that's another intention --

8 A. Do you want me to go on or --

9 Q. -- that you're ascribing.

10 Well, I'll let you, but I want to ask you about
11 that one.

12 So where do you get -- how do you reach your
13 conclusion that that step was taken for the reason you
14 just described?

15 MR. STEINBERG: Objection.

16 BY MR. BOSSET:

17 Q. How do you reach that conclusion?

18 MR. STEINBERG: Objection. Foundation.

19 Misstates his testimony.

20 BY MR. BOSSET:

21 Q. What's your methodology for discerning the --

22 A. Where does it --

23 Q. -- motivation for the conduct that you're
24 describing?

25 MR. STEINBERG: Objection. Vague.

SERGE EGELMAN, PH.D.

May 10, 2024

1 THE DEPONENT: I don't see where that even comes
2 up, though, in this sentence.

3 BY MR. BOSSET:

4 Q. That's my question. It's a new question.

5 MR. STEINBERG: What's your question?

6 THE DEPONENT: Yeah, what is the question, then?

7 BY MR. BOSSET:

8 Q. You said they convinced PayPal to switch over
9 the product they were using so it would sort of
10 back-justify Yodlee's collection of this data that they
11 weren't supposed to be collecting under the previous
12 product offering. Isn't that a statement of motivation,
13 sir?

14 MR. STEINBERG: Objection.

15 THE DEPONENT: There -- yeah, and that's
16 separate from paragraph 44.

17 BY MR. BOSSET:

18 Q. It sure is. I agree with that.

19 A. Yep.

20 Q. So it's another statement that you're making in
21 this case about the motivation of Yodlee's behavior,
22 right?

23 MR. STEINBERG: Objection.

24 THE DEPONENT: There are email exchanges
25 documented in the report where they try and get PayPal

SERGE EGELMAN, PH.D.

May 10, 2024

1 to move over to IAV+ so they wouldn't have to delete the
2 data per their contractual obligation.

3 BY MR. BOSSET:

4 Q. Well, PayPal moved over to IAV+ in 2016, right,
5 long before the email that you just referred to?

6 MR. STEINBERG: Objection.

7 THE DEPONENT: Which -- yeah, which -- this is a
8 different email I'm talking about.

9 BY MR. BOSSET:

10 Q. Mm-hmm. I know.

11 A. Okay. So I don't understand why you brought
12 that up.

13 Q. You were the one that brought that up, not me.
14 You referred to --

15 A. When you were asking --

16 Q. -- that email.

17 A. Yes, and I said there is's page of this --

18 Q. Mm-hmm.

19 A. -- where Bill Parsons says, we should be making
20 better use of the data. We have to monetize it.

21 Q. Mm-hmm.

22 A. And there's also multiple depositions where
23 multiple Yodlee employees have said, oh, for training
24 the machine learning models, it's better that we get
25 more data.

May 10, 2024

1 talking about.

2 BY MR. BOSSET:

3 Q. Well, I mean, whether or not you had the
4 experience you described, at the end, you've just read
5 emails and deposition transcripts and are drawing some
6 conclusions about what you think they say and what you
7 think they mean, right?

8 MR. STEINBERG: Objection.

9 THE DEPONENT: And leveraging my experience.

10 BY MR. BOSSET:

11 Q. What's the leverage that comes to play?

12 **A. Understanding how these concepts works.**
13 **Understanding how data is generally stored in these**
14 **systems. Understanding normal data practices. Yeah,**
15 **someone without any of this knowledge could read**
16 **documents and come to the same conclusions. Someone**
17 **could come to different conclusions. There are many**
18 **hypotheticals.**

19 MR. BOSSET: Okay. I have no further questions.
20 Thank you for your time.

21 THE DEPONENT: Okay. Thanks.

22 THE REPORTER: Anything, Counsel.

23 MR. STEINBERG: No. I think, because there's a
24 lot of confidential documents that have been discussed,
25 we can mark this as highly confidential, attorneys' eyes